

OPINION OF THE PUBLIC ACCESS COUNSELOR

DANIEL R. MOLA,
Complainant,

v.

INDIANA STATE POLICE,
Respondent.

Formal Complaint No.
20-FC-18

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the Indiana State Police violated the Access to Public Records Act.¹ Legal counsel Barbara L. Rosenberg, legal filed an answer on behalf of ISP. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on February 12, 2020.

¹ Ind. Code §§ 5-14-3-1-10

BACKGROUND

This case involves a dispute over the access to documents compiled by the Indiana State Police (ISP) during a criminal investigation.

On January 12, 2020, Daniel R. Mola (Complainant) filed a public records request with ISP seeking the following:

Any and all documents involving any and all encounters between Lakes of the Four Seasons [LOFS] security and former LOFS resident Christopher Andrew Elkins (DOB: 12/23/63), as well as any and all documents involving LOFS security being summoned to Mr. Elkins' residential address: 2443 E. Lakeshore Drive, Crown Point, IN 46307.

On January 24, 2020, ISP denied Mola's request, informing him that "seizure of any documents from this entity by the Indiana State Police is related to a criminal investigation and is excepted from disclosure as an investigatory record under Ind. Code 5-14-3-4(b)(1)."

As a result, Mola filed a formal complaint on February 12, 2020, alleging ISP improperly denied him access to records under the Access to Public Records Act (APRA). Mola argues that if the documents in question have been introduced in court, which he believes that they have been, then those materials should be accessible to the public regardless of any investigatory status.

On March 3, 2020, ISP filed an answer to Mola's complaint. ISP argues that the decision to deny Mola's request was appropriate in accordance with APRA's investigatory records exception.

ISP maintains that once records are properly categorized as investigatory, the agency retains discretion to choose if those records are disclosed regardless of the age or status of an investigation. Furthermore, since an investigatory record is defined as information compiled in the course of the investigation of a crime, a law enforcement agency has the ability to withhold materials categorized as investigatory records irrespective of formal charges being filed.

Additionally, ISP adds that if Mola believes the records in question were filed in court, then he may request those records from the court.

ANALYSIS

1. The Access to Public Records Act

The Access to Public Records Act (APRA) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Indiana State Police (ISP) is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the ISP’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

Indeed, APRA contains exceptions—both mandatory and discretionary—to the general rule of disclosure. In particular, APRA prohibits a public agency from disclosing certain records unless access is specifically required by state or federal statute or is ordered by a court under the rules of discovery. *See* Ind. Code § 5-14-3-4(a). In addition, APRA

lists other types of public records that may be excepted from disclosure at the discretion of the public agency. *See* Ind. Code § 5-14-3-4(b).

2. Investigatory records exception

APRA gives law enforcement agencies the discretion to withhold investigatory records from public disclosure. Ind. Code § 5-14-3-4(b)(1). There is no dispute that ISP is a law enforcement agency for purposes of the investigatory records exception. Ind. Code § 5-14-3-2(q)(6). That means ISP has discretion to withhold the agency's investigatory records from public disclosure.

APRA defines "investigatory record" as "information compiled in the course of the investigation of a crime." Ind. Code § 5-14-3-2(i).

Here, Mola's sole legal argument is that the records in question were introduced into the court record and therefore ISP lacks discretion to withhold the records from disclosure. This is not necessarily so.

According to Mola, the records were presented during a grand jury proceeding. This is not a court of record which would normally subject a document or piece of evidence to disclosable status. Instead Indiana Code section 35-42-2-4(i) states:

Grand jury proceedings shall be secret, and no person present during a grand jury proceeding may, except in the lawful discharge of his duties or upon written order of the court impaneling the grand jury or the court trying the case on indictment presented by the grand jury, disclose:

(1) the nature or substance of any grand jury testimony; or

(2) any decision, result, or other matter the grand jury proceeding.

Therefore any evidence submitted to a grand jury retains its status as non-disclosable even if it has been relinquished by law enforcement. Because of this, ISP does not lose the discretion to label the materials as investigatory.

CONCLUSION

Based on the foregoing, it is the opinion of this office that the Indiana State Police did not violate the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'LH Britt', is positioned above the name of the signatory.

Luke H. Britt
Public Access Counselor